

— EXHIBIT 8 —

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ABANTE ROOTER AND PLUMBING,)
INC., MARK HANKINS, and PHILIP)
J. CHARVAT, individually and on) Case No.
behalf of all others similarly) 4:15-cv-06314-YGR
situated,)
Plaintiffs,)
vs.)
ALARM.COM INCORPORATED, and)
ALARM.COM HOLDINGS, INC.,)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF STEVE KAUFER, CPP
March 8, 2018

Lori Arias, CSR 9433
434717



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1 that would allow Alliance to choose a component
2 manufactured by someone other than Alarm.com that
3 would fill that part of the alarm system?

4 A. Well, again, that's why -- that's why you
10:43 5 need an expert in the alarm industry, because you
6 can't provide Alarm.com service without the part
7 from Alarm.com, just as you can't provide the
8 Honeywell Total Connect service without the part
9 from Honeywell. So if -- if a company wants to
10:43 10 offer another service, then they just switch to a
11 different module.

12 Q. You've read the contract between Alliance
13 and Alarm.com, correct?

14 A. Correct.

10:44 15 Q. Did you see that there's an exclusivity
16 provision in the addendum?

17 A. Yes, but that doesn't mean that they could
18 decide we no longer want to use Alarm.com and go to
19 Honeywell Total Connect or DMP SecureCom.

10:44 20 Q. So long as that contract is in place
21 between Alarm.com and Alliance, they are precluded
22 from going to a different company to provide that
23 component --

24 A. But they could end --

10:44 25 Q. -- is that correct?

1 MS. SCHUCHARDT: Objection.

2 THE WITNESS: -- they could end the contract,
3 correct.

4 BY MS. TERRELL:

10:44 5 Q. Okay. So -- so your -- your assumption
6 that Alliance had a choice about which type of
7 component to use other than Alarm.com assumes that
8 in order to exercise that choice, they would need
9 to terminate the contract with Alarm.com?

10:44 10 MS. SCHUCHARDT: Objection.

11 THE WITNESS: If they wanted to provide a
12 service other than Alarm.com, they would have to
13 use a different module, yes.

14 BY MS. TERRELL:

10:45 15 Q. Do you know whether Alliance ever
16 terminated the contract with Alarm.com during the
17 time which is relevant to this lawsuit?

18 A. I do not.

19 Q. So while there might be a general ability
10:45 20 in the alarm industry for alarm companies to choose
21 components to put into whatever system they're
22 going to sell, for purposes of this case, Alliance
23 had contracted away that choice.

24 Isn't that correct?

10:45 25 MS. SCHUCHARDT: Objection to form.

1 you're an Alarm.com dealer, you're a Honeywell
2 dealer, they don't give you the set of standards
3 and practices that they want to apply to your
4 business.

11:23 5 BY MS. TERRELL:

6 Q. I see in paragraph 19 two components. One
7 is they do not dictate or exert control. Okay?

8 A. Okay.

9 Q. The second one is that they cannot dictate
11:23 10 or exert control. So we've just discussed your
11 understanding of what Alarm.com does or does not do
12 with regard to exerting control over Alliance
13 Security. Okay? So set that to one side.

14 A. Okay.

11:23 15 Q. Do you have an opinion about whether or
16 not -- based on the actual facts and the
17 relationship between Alarm.com and Alliance,
18 whether or not Alarm.com could have exerted control
19 over the relationship, the day-to-day business
11:23 20 operation of Alliance -- and I want to be clear --
21 including the manner in which Alliance is selling
22 the Alarm.com systems?

23 MS. SCHUCHARDT: Objection to form.

24 THE WITNESS: I didn't see any evidence of that
11:24 25 in the agreement, no.

1 BY MS. TERRELL:

2 Q. Okay. That's a different question. Do
3 you have an opinion about whether or not they could
4 have exerted control?

11:24 5 A. No. I mean they could have, but it's not
6 the standard in the industry to do that.

7 Q. Okay. You say "cannot dictate." I'm
8 asking you do you have an opinion you're going to
9 offer in this case that Alarm.com could not have
11:24 10 exerted control over the manner in which Alliance
11 was selling systems that included the Alarm.com
12 component, including the manner in which those
13 systems were sold using telemarketing?

14 MS. SCHUCHARDT: Objection to form.

11:24 15 THE WITNESS: Well, the answer to that is of
16 course they could, but they didn't, and that's not
17 standard in the industry. I mean they could do
18 anything they wanted to do if the other party
19 allowed them to do that, but that's not what they
11:25 20 did, nor is it the standard of care in the
21 industry.

22 BY MS. TERRELL:

23 Q. For example, the contract, which is the
24 only document that you reviewed and that you're
11:25 25 basing your opinion on for this case with regard to

1 anybody else. It applies to a company like
2 Alliance or VMS, if they were members -- and I
3 don't know that they were or were not. That is the
4 target of the Code of Ethics. It's -- all the
11:40 5 language points to the alarm company, not the
6 manufacturer.

7 Q. Is Alarm.com a member of ESA?

8 A. Yes.

9 Q. Was Alarm.com a member of ESA during the
11:40 10 time that -- that -- during the time that it had a
11 relationship with Alliance?

12 A. I believe so, yes.

13 Q. As a member of the ESA, it has agreed to
14 abide by the ESA Code of Ethics, correct?

11:40 15 MS. SCHUCHARDT: Objection.

16 THE WITNESS: Correct.

17 BY MS. TERRELL:

18 Q. Is it your opinion that Alarm.com abided
19 by the ESA Code of Ethics?

11:40 20 A. Yes.

21 Q. In what way?

22 A. Well, again, the Code of Ethics primarily
23 applies to alarm companies. The actions of
24 Alarm.com didn't violate those page after page of
11:41 25 issues related to the alarm industry.

1 BY MS. TERRELL:

2 Q. You're testifying about the standard in
3 the industry, right? What -- what companies should
4 typically do, right?

11:54 5 MS. SCHUCHARDT: Objection.

6 THE WITNESS: Right.

7 BY MS. TERRELL:

8 Q. And you qualified that by saying that
9 general standards might be different -- in other
11:54 10 words, you -- one company might exert control over
11 another -- a manufacturer or a monitoring
12 company -- perhaps should exert control over a
13 dealer if it was aware that there were problems,
14 right?

11:54 15 MS. SCHUCHARDT: Objection.

16 THE WITNESS: Right.

17 BY MS. TERRELL:

18 Q. So why isn't it relevant to your opinion
19 as to whether or not Alarm.com could have exerted
11:54 20 control over Alliance? Why don't you want to know,
21 in connection with that opinion, whether or not
22 Alliance -- Alarm.com actually knew that Alliance
23 was engaging in telemarketing violations?

24 MS. SCHUCHARDT: Objection, asked and answered.

11:55 25 THE WITNESS: Because it's not part of what I

1 was hired to do. That's not part of my scope of
2 retention.

3 BY MS. TERRELL:

4 Q. Because you don't actually have an opinion
11:55 5 about whether Alarm.com could have controlled
6 Alliance --

7 MS. SCHUCHARDT: Objection.

8 BY MS. TERRELL:

9 Q. -- right?

11:55 10 A. I don't have -- I don't agree with that.

11 Q. What is your opinion about whether --
12 based on the facts that are actually in play in
13 this case, whether Alarm.com could have controlled
14 Alliance?

11:55 15 A. Well, the facts are there are allegations
16 and investigations and fines. There's no
17 indication to me that Alarm.com knew that.

18 Q. So it's the knowledge. That's what you
19 think is missing, right?

11:55 20 A. The knowledge on the part of Alarm.com?

21 Q. Right.

22 A. Yes.

23 Q. Okay. What if Alarm.com knew about each
24 of these allegations prior to executing the first
11:56 25 amendment to the agreement that it had with

1 Alliance?

2 MS. SCHUCHARDT: Objection to the form of the
3 question.

4 THE WITNESS: I don't know if they did know,
11:56 5 but if they did, I don't know what actions they
6 took to investigate and determine these issues and
7 what investigation they may or may not have done in
8 talking to Alliance or any of the other dealers
9 related to that.

11:56 10 BY MS. TERRELL:

11 Q. And why would you want to know that? Why
12 would you want to know whether they knew and
13 whether, if they knew, what follow-up they did?

14 A. Because, as we talked about before, that's
11:56 15 something they could do.

16 Q. Right.

17 A. They could check.

18 Q. They could check. And they could check,
19 they could investigate, they could determine what
11:56 20 was happening, and they could potentially place
21 restrictions or limitations on Alliance going
22 forward, correct?

23 MS. SCHUCHARDT: Objection.

24 THE WITNESS: Correct.

25 ///

1 BY MS. TERRELL:

2 Q. The most extreme of which could be to
3 choose to invoke paragraph 7.1 of the agreement to
4 terminate Alliance for violating the law, right?

11:57 5 MS. SCHUCHARDT: Objection.

6 THE WITNESS: They could, yes.

7 BY MS. TERRELL:

8 Q. But as you sit here today, you don't know
9 whether they knew; you don't know if they knew,
11:57 10 what steps they took; or anything related to those
11 topics, right?

12 A. Correct.

13 Q. Before we do this -- have you read any
14 deposition transcripts from this case?

11:58 15 A. No.

16 Q. Have you read any summaries of deposition
17 transcripts from this case?

18 A. No.

19 MS. TERRELL: Mark this as [Exhibit 4](#).

11:59 20 ([Exhibit 4](#) marked for identification.)

21 BY MS. TERRELL:

22 Q. So, Mr. Kaufer, [Exhibit 2](#) to your
23 declaration -- to your deposition, sorry, is the
24 Complaint in this case, and it references, as we
11:59 25 mentioned earlier in paragraph 56, the Today show,

1 alarm system -- which is part of what you opined
2 people in the industry do -- they're specifically
3 promoting a product that includes an Alarm.com
4 technology, right?

01:21 5 MS. SCHUCHARDT: Objection.

6 THE WITNESS: Again, I don't see anything wrong
7 with that. You know, they're getting -- they're
8 getting funding from Alarm.com, and that's not
9 unusual for alarm -- alarm companies to promote.

01:21 10 MS. TERRELL: Mark that as Exhibit 8.

11 (Exhibit 8 marked for identification.)

12 BY MS. TERRELL:

13 Q. And so Exhibit 8 is a document Bates
14 stamped ALARM-0001248. It's a business card of
01:22 15 Mike Gray, who's a lead technician in Alliance
16 Security, and you see that both the logos for
17 Alliance Security and Alarm.com are on his card.

18 A. Okay.

19 Q. So again, this is just not surprising to
01:22 20 you. This is what happens in the industry?

21 A. Correct.

22 Q. The fact that Mr. Gray, when he's out
23 visiting a homeowner to discuss an alarm system,
24 would hand the homeowner his business card that has
01:22 25 Alarm.com on it, and that indicates that the

1 product that's being sold is in part on behalf of
2 Alarm.com?

3 MS. SCHUCHARDT: Objection.

4 THE WITNESS: Not on behalf of. It indicates
01:22 5 that they're using a product in the system that
6 they're selling. They're not selling it on behalf
7 of Alarm.com. They're selling it as part of a
8 system that they've configured and are offering to
9 their potential clients.

01:23 10 BY MS. TERRELL:

11 Q. But Mr. Gray is handing the homeowner a
12 card that has Alarm.com on it, because Alarm.com
13 said he had to, right?

14 MS. SCHUCHARDT: Objection.

01:23 15 THE WITNESS: No. There's no proof that
16 Alarm.com said they had to pass out these business
17 cards. There's an e-mail that you showed me that
18 said that they were going to give them business
19 cards, but I don't know that they're required to
01:23 20 pass them out, and even if they were required to
21 pass them out, there's nothing wrong with that in
22 the industry.

23 I mean it's common that the logo is put on
24 devices if -- or on, you know, advertising,
01:23 25 websites, trucks, shirts.

1 BY MS. TERRELL:

2 Q. But here we know that there's an exclusive
3 relationship between Alarm.com and Alliance, right?

4 MS. SCHUCHARDT: Objection.

01:23 5 BY MS. TERRELL:

6 Q. Based on the contract that is basically
7 the heart of your opinions today.

8 A. Okay.

9 MS. SCHUCHARDT: Objection.

01:23 10 THE WITNESS: But I don't know what that has to
11 do with this.

12 BY MS. TERRELL:

13 Q. Because it doesn't say Alarm.com and
14 Honeywell and Monotronics and, and, and, and,
01:24 15 right? It all just says "Alarm.com."

16 MS. SCHUCHARDT: Objection.

17 THE WITNESS: That's the -- that's the person
18 or the company they chose to promote or -- I don't
19 see anything nefarious in that.

01:24 20 BY MS. TERRELL:

21 Q. Okay. Not necessarily nefarious, but --

22 A. Well, you're trying to paint it as
23 nefarious.

24 Q. Well, your opinion is that manufacturers
01:24 25 and dealers promote their own systems, not someone

1 else's, and this very evidence I've shown you shows
2 you Alliance promoting Alarm.com.

3 A. That's true.

4 MS. SCHUCHARDT: Objection.

01:24 5 THE WITNESS: And I also offer the opinion that
6 it's not unusual for that to happen. So even
7 though Alliance is promoting Alliance (sic),
8 they're saying this is -- this is a vendor that we
9 chose to provide service through.

01:24 10 BY MS. TERRELL:

11 Q. In fact, to exclusively provide that type
12 of service through, and that vendor has required
13 them to include those logos on their website and on
14 their marketing materials in exchange for money and
01:25 15 incentives, right?

16 MS. SCHUCHARDT: Objection, and objection to
17 form.

18 THE WITNESS: Well, I don't know whether it's
19 required on their business cards.

01:25 20 BY MS. TERRELL:

21 Q. Their website and other marketing
22 collateral, correct?

23 A. Correct.

24 Q. Why would --

01:25 25 MS. SCHUCHARDT: Same objections.

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, Lori L. Arias, hereby certify:

I am a duly qualified Certified Shorthand Reporter in the State of California, holder of Certificate Number CSR 9433 issued by the Certified Court Reporters' Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)(1)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a)(a)).

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record

/ / /

1 of the testimony given by the witness. (Fed. R. Civ. P.
2 30(f)(1)).

3 Before completion of the deposition, review of
4 the transcript [] was [XX] was not requested. If
5 requested, any changes made by the deponent (and
6 provided to the reporter) during the period allowed, are
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8
9 Dated: March 20, 2018

10
11
12
13 
14 _____

From: Jake Murray [jmurray@alliancesecurity.com]
Sent: Tuesday, May 05, 2015 2:47 PM
To: Nicole Brown
CC: Noah Billger
Subject: Re: Alliance Website and Marketing Fund Usage 2015

Hi Nicole ! I just let our marketing team know, i am sure this was a simple oversight. The page has gone through so many changes in the last 6 months... it just might have gotten missed.

I will keep you posted. Once i do... i have a few ideas to spend that money !

On Fri, May 1, 2015 at 2:37 PM, Nicole Brown <nbrown@alarm.com> wrote:

Jake!!!

I feel like I haven't talked to you in forever ☺ I just wanted to reach out and see if we want to start gearing up another Marketing project to use your 2015 funds! This is not part of the co-advertising money that we are going to give you, but a separate \$4,000 in Marketing Development Funds.

Also, loving the new website except I noticed the powered by Alarm.com logo wasn't on there anymore. In order to take advantage of the Advertising money as well as the Marketing Funds, we ask that the attached logo be on the homepage somewhere for that partnership recognition ☺

Let's chat about another project and see what we can do this year now that all your techs have jackets and business cards :) haha. Also, let me know when the logo is back in action!

Nicole

Nicole Brown

Marketing Manager

nbrown@alarm.com

www.alarm.com

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--
Alliance Security

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 <http://www.jobs.net/jobs/alliance-security/en-us/join>

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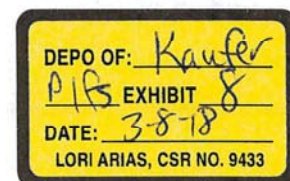
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